

ESTTA Tracking number: **ESTTA432568**Filing date: **09/27/2011**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Capital Beltway Atheists		
Entity	Unincorporated Association	Citizenship	Virginia
Address	Post Office Box 21350 Washington, DC 21350 UNITED STATES		

Attorney information	Jonathan A. Nelson Day & Johns, PLLC 10560 Main Street Suite 218 Fairfax, VA 22030 UNITED STATES jnelson@dayjohns.com Phone:(703) 268-5600
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Applicant Information

Application No	85267284	Publication date	08/30/2011
Opposition Filing Date	09/27/2011	Opposition Period Ends	09/29/2011
Applicant	Beltway Atheists, Inc. 18869 Accokeek Terrace Leesburg, VA 20176 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 2005/05/04 First Use In Commerce: 2006/12/22

All goods and services in the class are opposed, namely: Public advocacy to promote awareness of matters relating to the Constitutional separation of church and state

Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Transfer, consent, and/or waiver prior to filing; Hough Mfg. Corp. v. Virginia Metal Industries, Inc., 453 F. Supp. 496 (E.D.Va. 1978)

Marks Cited by Opposer as Basis for Opposition

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	CAPITAL BELTWAY ATHEISTS		

Goods/Services	Information dissemination and advocacy for atheist ideas and education and social interaction for supporters of atheist ideas.
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U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	BELTWAY ATHEISTS		
Goods/Services	Information dissemination and advocacy for atheist ideas and education and social interaction for supporters of atheist ideas.		

Attachments	CBA USPTO Opposition.pdf (5 pages)(21377 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/s/
Name	Jonathan A. Nelson
Date	09/27/2011

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

<i>In the matter of trademark application</i>)	
<i>Serial No. 85-267,284</i>)	
<i>For the mark "Beltway Atheists"</i>)	
<i>Published in the Official Gazette on:</i>)	
<i>August 30, 2011</i>)	
)	Case No. _____
Capital Beltway Atheists, an unincorporated)	
association, by its officers Shelley Mountjoy)	
and Christopher Arntzen,)	
<i>Opposer</i>)	
)	
v.)	
)	
Beltway Atheists, Inc.)	
<i>Applicant</i>)	

NOTICE OF OPPOSITION

COMES NOW Capital Beltway Atheists, an unincorporated association operating primarily in Northern Virginia, the District of Columbia, and Maryland, represented by its officers Shelley Mountjoy and Christopher Arntzen, with a mailing address of Post Office Box 21350, Washington, DC 20009, by counsel, and notices all interested parties that it believes it will be damaged by registration of the mark shown in the above-identified application, and hereby opposes the same as to all classes.

The grounds for opposition are as follows:

1. Beltway Atheists, Inc. ("Applicant") filed in the U.S. Patent and Trademark Office on March 15, 2011 a trademark application, serial number 85,267,284 ("the '284 Application") for the standard character service mark "Beltway Atheists" ("the Mark").
2. Beltway Atheists, Inc. claimed a first use of the mark on May 4, 2005 and first use in commerce of December 22, 2006, in International Class 035 for "public advocacy

to promote awareness of matters relating to the Constitutional separation of church and state” (“the Class”)

3. The Mark was published in the *Trademark Official Gazette* on August 30, 2011, and the period for opposition is still open at the time of filing this Opposition.

4. Capital Beltway Atheists is an unincorporated association which was founded in 2006 as Beltway Atheists, and which retained the name Beltway Atheists until May of 2010. Capital Beltway Atheists serves its members and the Northern Virginia, District of Columbia, and Maryland area community by providing information dissemination and advocacy for atheist ideas and education and social interaction for supporters of atheist ideas. Capital Beltway Atheists currently has about 800 members.

5. Among the original officers of Capital Beltway Atheists (then Beltway Atheists) was Richard Wingrove (“Mr. Wingrove”), who on information and belief is the principal officer and owner of Applicant and the individual who filed on behalf of Applicant the ‘284 Application.

6. Applicant is a District of Columbia corporation with nonprofit status which was founded in June of 2008 by Mr. Wingrove, three years after the alleged first use of the Mark.

7. Leadership of the unincorporated association Beltway Atheists transitioned in an orderly manner to, *inter alia*, Shelley Mountjoy and Christopher Arntzen in 2008, with Mr. Wingrove’s voluntary and active consent.

8. In April 2010, following internal conflict in the unincorporated association Beltway Atheists, Mr. Wingrove was removed as a member of the association by its officers.

9. During the entire period from the founding of the unincorporated association Beltway Atheists until the removal of Mr. Wingrove, the unincorporated association Beltway Atheists had the right to use the name “Beltway Atheists.”

10. After the departure of Mr. Wingrove from the unincorporated association Beltway Atheists, the name was changed to Capital Beltway Atheists, a name selected to show the continuation of the former group. The group continues to publicly identify itself as being formerly Beltway Atheists. The transition maintained continuity of leadership and of orderly operations as a single association.

11. During the entire existence of Capital Beltway Atheists, both under its current name and under the name Beltway Atheists, the efforts and investments of the association generated considerable goodwill, both inside the association and with the community, and developed significant name recognition within the field.

12. Applicant’s purported services are closely related to the services provided by Capital Beltway Atheists, and to the extent they are not, the services of both Applicant and Capital Beltway Atheists are so substantially similar as to be within the natural zone of expansion of each other.

13. Applicant’s purported services are aimed at the same audience and base of support and donations as Capital Beltway Atheists, including socially active self-identified atheists and persons in public office.

14. Members of the community, including socially active self-identified atheists and persons in public office are likely to be confused by the substantial similarity of names and the historically identical names, and are likely to mistakenly believe that Applicant’s services are authorized by, endorsed by, affiliated with, or otherwise

approved by Capital Beltway Atheists, or that Applicant is in fact affiliated with or identical with Capital Beltway Atheists.

15. To the extent Applicant relies on the existence of the unincorporated association Beltway Atheists for its dates of use in commerce, Applicant lacks the right to claim such use.

16. On information and belief, Applicant has used the Mark only minimally or not at all in actual commerce.

17. On information and belief, Applicant has not kept the Mark in continuous use since the dates of first use claimed by Applicant.

18. On information and belief, Applicant did not use the Mark in connection with the claimed Class at the time Applicant filed the '284 Application.

19. To the extent the Applicant, Mr. Wingrove, or any predecessor in interest ever had any right to the Mark, they transferred any rights to the Mark to the unincorporated association Beltway Atheists.

20. To the extent the Applicant, Mr. Wingrove, or any predecessor in interest ever had any right to the Mark, they consented to this use of the Mark.

21. To the extent the Applicant, Mr. Wingrove, or any predecessor in interest ever had any right to the Mark, they waived any right to object to this use.

22. On information and belief, Applicant has filed the '284 Application primarily to favorably position its principal officer Richard Wingrove in the internecine conflict which followed his April 2010 removal.

23. For the foregoing reasons, registration of the Mark sought by the Applicant would be contrary to law, in particular the provisions of 15 U.S.C. § 1052.

24. Capital Beltway Atheists believes it would be damaged by the registration of the Mark sought by the Applicant.

WHEREFORE, Capital Beltway Atheists, by its officers Shelley Mountjoy and Christopher Arntzen, respectfully requests that the registration sought in application number 85,267,284 be refused and this opposition sustained in favor of Capital Beltway Atheists and against Beltway Atheists, Inc.

By _____/s/_____
Jonathan A. Nelson, Virginia State Bar # 75247
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Facsimile: (703) 268-5602
jnelson@dayjohns.com
Attorney for Opposer Capital Beltway Atheists

Date: September 27, 2011

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th of September, 2011 a true and accurate copy of the above "Notice of Opposition" was sent via first-class mail, postage pre-paid to the following:

Beltway Atheists, Inc.
c/o Mr. Richard Wingrove
18869 Accokeek Terrace
Leesburg, Virginia 20176

Day & Johns, PLLC
10560 Main Street
Suite 218
Fairfax, Virginia 22030
Phone: (703) 268-5600
Fax: (703) 268-5602

_____/s/_____
Jonathan A. Nelson